

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: Chapter 11  
Case No. 20-10940 (LSS)

ALPHA ENTERTAINMENT LLC,  
Debtor.

. . . . .

PETER HURWITZ, solely in Adversary Proceeding  
his capacity as Plan No. 22-50256 (LSS)  
Administrator of Alpha  
Entertainment LLC,  
Plaintiff,

v.

OLIVER LUCK,  
Defendant.

. . . . .

OLIVER LUCK,  
Third-Party Plaintiff,

v.

VINCENT K. MCMAHON, Courtroom No. 2  
824 Market Street  
Wilmington, Delaware 19801  
Third-Party Defendant.

Monday, January 23, 2023  
1:59 p.m.

. . . . .

TRANSCRIPT OF HEARING  
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN  
CHIEF UNITED STATES BANKRUPTCY JUDGE

1 APPEARANCES:

2 For Plan Administrator  
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8  
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13 -and-

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24 Proceedings recorded by electronic sound recording,  
25 transcript produced by transcription service.

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Agenda

Item 1: Motion for Transfer of Venue

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[Adv. Docket No. 13, Filed May 17, 2022]

Court's Ruling:

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Transcriptionist's Certificate

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1 (Proceedings commenced at 1:59 p.m.)

2 THE CLERK: Please rise.

3 THE COURT: Please be seated.

4 MR. CLARK: Good afternoon, Your Honor.

5 THE COURT: Good afternoon.

6 MR. CLARK: Tony Clark with Greenberg Traurig for  
7 the Plaintiff, Peter Hurwitz, plan administrator for Alpha  
8 Entertainment. I'd like to introduce my colleague Howard  
9 Stern -- Steinberg, who has been admitted *pro hac vice*, and  
10 with the Court's permission, will be handling the argument  
11 today.

12 THE COURT: Yes.

13 MR. CLARK: Thank you, Your Honor.

14 THE COURT: Thank you.

15 MR. FLASSER: Good afternoon, Your Honor. Greg  
16 Flasser from Bayard, on behalf of Oliver Luck. Introducing  
17 my co-counsel here, Eric Goldstein, who has also been  
18 admitted *pro hac vice*. I'll turn the podium over to him.

19 THE COURT: Mr. Goldstein --

20 MR. GOLDSTEIN: Good afternoon, Your Honor.

21 THE COURT: -- good afternoon.

22 MR. GOLDSTEIN: For the record, Eric Goldstein, on  
23 behalf of Oliver Luck.

24 Your Honor, I will confess that it's not often the  
25 case you move to transfer venue and an avoidance action. And

1 I will confess that an estate representative is entitled to  
2 due deference to their choice of venue in bringing an  
3 avoidance action in the same district where the main case is.  
4 But there are rare instances, there are rare cases where a  
5 transfer venue --

6 THE COURT: Excuse me.

7 MR. GOLDSTEIN: Bless you, Your Honor.

8 -- but there are the rare cases where, in the  
9 interest of justice and the convenience of the parties and  
10 witnesses, it makes sense, and this is one of them.

11 There's a number of factors here that I'm just  
12 going to highlight very briefly at the opening, that  
13 differentiate this case from the garden-variety avoidance  
14 action that we're so used to deal with. One, there's the  
15 existence of multi-year litigation in the Connecticut  
16 District Court involving these same parties: Mr. Luck,  
17 Alpha, Mr. McMahon.

18 There's a pending motion to withdraw the reference  
19 in this case and at some point, the reference will be  
20 withdrawn, because the parties have sought a jury trial and  
21 not consented to do so before the Bankruptcy Court.

22 THE COURT: Okay. I take it that the district  
23 court judge has not ruled on that?

24 MR. GOLDSTEIN: Correct, Your Honor. It's fully  
25 submitted and it just hasn't been ruled on yet.

1           There are no other avoidance actions in this case.  
2 I checked the docket again this morning just to confirm my  
3 recollection and my recollection was confirmed. There are no  
4 other avoidance actions. This isn't the instance of where  
5 you have an estate that's liquidating that's got a multitude  
6 of avoidance actions and you risk inconsistent judgments or  
7 you really emphasize the centrality of the bankruptcy  
8 process. This is one. This is the only one.

9           Most fact witnesses are going to be third-party  
10 witnesses. Mr. Luck is Mr. Luck. He's an individual. He  
11 doesn't have anybody he could compel or ask politely to show  
12 up and Alpha is a defunct entity. So, the witnesses here are  
13 going to be third parties. They're going to be former  
14 employees of Alpha. They're going to be former or current  
15 employees of World Wrestling Entertainment. Those folks, we  
16 believe, are in Connecticut.

17           The debtor had its principal place of business in  
18 Connecticut. It used -- its two owners, Mr. McMahon and  
19 World Wrestling Entertainment are in Connecticut.  
20 Mr. McMahon is a citizen. World Wrestling has its principal  
21 place of business there.

22           The nature of the claims at issue here, and I know  
23 we're going to talk about this in one quick second, involve  
24 events that occurred in Connecticut and put at issue, the  
25 services provided by Mr. Luck under an employment contract

1 that was governed by Connecticut law. And, finally, which is  
2 also unusual, there's a third-party claim by Mr. Luck against  
3 Mr. McMahon in this case seeking recoveries of any monies  
4 that get avoided and recovered by the plan administrator.  
5 Mr. Luck brings a claim to have those paid by Mr. McMahon  
6 under a guaranty, which is governed by Connecticut law.

7           So, briefly, if I may, just to explain kind of how  
8 we got here, because it's a little convoluted, in this  
9 adversary proceeding is a complaint by the plan administrator  
10 against Mr. Luck, who's the former CEO and Commissioner of  
11 the XFL, seeking recovery under two theories: preference and  
12 fraudulent transfer. And the fraudulent transfer being a  
13 constructive fraudulent transfer, both under 548 and 554.

14           Focusing on the fraudulent transfer comes in two  
15 theories, also. One is that the obligation incurred under  
16 the employment contract was incurred for less than reasonably  
17 equivalent value, based on the services that Mr. Luck was to  
18 provide and that Alpha received less than reasonably  
19 equivalent value for the payment of the compensation because  
20 Mr. Luck's performance was deficient.

21           And, specifically, those alleged deficiencies  
22 involve the same allegations that came up with the  
23 Connecticut District Court case. This was involvement in the  
24 negotiating of venue contracts; involvement in signing a  
25 player, a Mr. Calloway (phonetic); a failure to attend

1 meetings after the onset of COVID; use of XFL electronic  
2 devices for personal reasons; and disclosing confidential  
3 information. And those will all sound similar, because I'm  
4 going to get to -- familiar -- because I'm going to get to  
5 them in a second in the context of the district court action.

6           The district court action. Just days before Alpha  
7 filed for bankruptcy, Mr. Luck was terminated in April 2020  
8 from his position. Shortly thereafter, Mr. Luck commenced  
9 the lawsuit against Mr. McMahon in Connecticut District Court  
10 to recover unpaid compensation that was due to him under his  
11 employment contract. The District Court in Connecticut ruled  
12 that Alpha had -- was an indispensable party and needed to be  
13 brought into the case and, thus, Mr. Luck moved for relief  
14 from stay in this case to do so for the limited purpose of  
15 seeking a declaration as to the nature of his termination,  
16 and agreed not to pursue any recovery against Alpha, but  
17 solely against Mr. McMahon.

18           So, the stay was lifted. They were joined.  
19 Shortly thereafter, in November 2020, a settlement was  
20 reached between Alpha's estate and Mr. McMahon to allow  
21 Mr. McMahon to bring claims and causes of action of Alpha,  
22 other than Chapter 5 claims, which they're at issue here,  
23 against Mr. Luck in the Connecticut District Court action.  
24 Two-thirds, if memory serves, of that recovery goes to --  
25 would have gone to Alpha and the rest being kept by Mr.



1 McMahon.

2           Consistent with that agreement in early 2021,  
3 Alpha brought those counterclaims against Mr. McMahon under a  
4 breach of contract and breach of fiduciary duty theories.  
5 And the underlying allegations are very similar to the ones I  
6 just recited in the plan administrator's complaint; it has to  
7 do with the hiring of Mr. Calloway, proper use of a company  
8 phone, a violation of confidential -- confidentiality  
9 requirements, abandonment duties of COVID. Those were the  
10 needs for the factual allegations under breach of contract  
11 and breach of fiduciary duty theories.

12           Flash forward into 2022, the case was heavily  
13 litigated. We attached the docket sheet to our motion just  
14 to give it flavor. February 2022, the Connecticut District  
15 Court ruled on cross-motions for summary judgment and a  
16 number of other pending motions and ultimately narrowed the  
17 case considerably. The judge was able to dismiss a number of  
18 the claims, the breach of contract claims and the breach of  
19 fiduciary duty claims with regard to Mr. Luck, and narrowed  
20 it to a very -- an issue concerning the hiring and  
21 termination of one of the players, Mr. Calloway, and whether  
22 or not that was cause for Mr. Luck to be terminated and  
23 whether if it was, it could have been cured.

24           So after that decision, a jury trial was set to  
25 commence in July of 2022 and as things happened, at the end

1 of June 2022, the litigation was settled. And it was a  
2 confidential settlement agreement and the case was dismissed,  
3 which brings us to August of 2022. That's when Mr. Luck  
4 brought that third-party complaint against Mr. McMahon in  
5 this case, to the extent any of his compensation is avoided  
6 and recovered. That's how we got here.

7           So, under the 20 U.S.C. 1412 and, you know, the  
8 case law directs you to look at the Jumara factors. And  
9 going through those factors, and I'll go through them very  
10 briefly right now, I think all of them are either, with the  
11 exception of Plaintiff's choice of forum, either are neutral  
12 or favor transfer of venue. So, obviously, one Plaintiff's  
13 choice of forum, that's in favor of keeping it here and the  
14 case law, you know, admittedly gives that a strong weight.

15           The Defendant's choice of forum, obviously,  
16 Mr. Luck wants to litigate this in Connecticut. That,  
17 admittedly, case law says is not given as equal as one,  
18 right. So, those don't necessarily cancel each other out,  
19 but that's where we are for the first two.

20           The third is where the claims arose -- if they  
21 arose elsewhere. Here, the claims arose in Connecticut. The  
22 plan administrator argues that the claims arose where the  
23 Debtor was located and where the recipient received the  
24 payment. Both were in Connecticut. The principal place of  
25 business is in Stamford, Connecticut, for Alpha. Mr. Luck

1 was the CEO and Commissioner of the XFL. He worked out of  
2 Stanford, Connecticut, out of the headquarters, with the  
3 exception of when he traveled for business.

4           The -- there was the use by Alpha of the services  
5 of WWE. So, if you -- backing up for a second, Mr. McMahon  
6 is the principal owner of Alpha. His company, which he  
7 previously founded, World Wrestling Entertainment, was also  
8 an owner of Alpha and also provided services under a shared-  
9 services agreement. And so, WWE is also headquartered in  
10 Stanford.

11           The employment contract at issue in this, as I  
12 mentioned before, it's governed by Connecticut law in the  
13 performance of that, or I guess, the allegation meaning the  
14 lack of performance of it would have been in Connecticut.  
15 So, with regard to case law in this, the plan administrator  
16 argues, and they cite RCS Creditor Trust and Stone & Webster  
17 that, look, the performance of -- where the performance was  
18 in these types of avoidance actions doesn't matter.

19           Looking at those cases, RCS cites to Stone &  
20 Webster -- Stone & Webster, and in another case called Hayes  
21 Lemmerz -- I don't know if I'm pronouncing that right -- but  
22 those cases, Stone & Webster, Hayes Lemmerz, those are  
23 preference cases and it totally makes sense, right; that  
24 where you perform under a contract doesn't make -- have much  
25 bearing on the 547 analysis.

1           But here, what's at issue, this is, like, a  
2 routine preference case, with regard to the fraudulent  
3 transfer claims. What is here put at issue is Mr. Luck's  
4 performance under the employment agreement. The allegation  
5 in paragraph 15 of the complaint is that the compensation was  
6 vastly greater than the value of Mr. Luck's services. The  
7 allegation in the next paragraph, 16, is that Luck's  
8 performance, as Commissioner and CEO, was woefully  
9 inadequate.

10           So, it's hard to disentangle the performance of  
11 the employment agreement from the allegations in the  
12 complaint and thus, we'd argue that the -- that where the  
13 claim arose was in Connecticut.

14           Location of books and records is our next one.  
15 This one, you know, seems a vestige of older times. This  
16 is -- you know, we live in the world of electronic discovery,  
17 so in my view, this is neutral, but if it had to be tilted in  
18 any potential direction, I think it would tilt a little bit  
19 towards Connecticut, again, just because that's where Alpha  
20 had its place of business and it was reliant on shared  
21 services with WWE, which is still in Connecticut.

22           Convenience of the parties and the witnesses, I  
23 was going to kind of take those together. With regard to the  
24 parties, obviously, Mr. Luck would prefer -- this is more  
25 convenient for Mr. Luck in Connecticut. He's got my firm,

1 Shipman & Goodwin. We're in Connecticut. We've been  
2 involved in more of a local counsel role in the district  
3 court case. And then I have been personally involved in the  
4 bankruptcy case, starting from the point where we had to get  
5 the lift stay.

6 And, you know, obviously, as much as I enjoy  
7 working with Attorney Flasser and the Bayard Firm, Mr. Luck,  
8 my client, would prefer to not have to pay two sets of  
9 lawyers, so if this could at all be litigated in Connecticut,  
10 that's beneficial to him.

11 The plan administrator, I gather from reading the  
12 plan administrator agreement, which was annexed to the plan  
13 supplement, lives in Irvington, New York, which is about 25  
14 to 30 miles from the state of Connecticut, which is a lot  
15 closer than it is to Delaware. And the third-party Defendant  
16 Mr. McMahon is a -- he's a Connecticut citizen.

17 With regard to the witnesses, as I mentioned at  
18 the outset, these are going to be third-party fact witnesses  
19 in this case, bearing on things like the negotiation of the  
20 employment contract, the search, the back-and-forth from that  
21 negotiation, the services rendered by Mr. Luck. So, this is  
22 going to be the executives, or I guess the former executives  
23 of Alpha, and this is going to be the folks at WWE, the  
24 executives who were involved in the early days of Alpha.

25 So, based on those statement of financial affairs,

1 it appears the primary officers of Alpha, Mr. Pollock and  
2 Mr. DeVito, had business addresses in Connecticut, so we  
3 presume that they would still be in Connecticut. And if this  
4 litigation was in Connecticut, they could be compelled by  
5 subpoena to appear at trial. Mr. McMahon, he's a party, but  
6 is a citizen of Connecticut.

7           We believe that WWE senior executives and staff  
8 may also have important testimony on the case and they would  
9 be in and around Connecticut because of where WWE is  
10 headquartered in Stanford. All these people who would likely  
11 be out of subpoena range of this Court and given the way that  
12 Mr. Luck was terminated at the end of his employment, I  
13 don't -- I can't -- my guess would be that nobody's going to  
14 cooperate with him to appear, absent a subpoena. So, for all  
15 those reasons, you know, having this case in Connecticut  
16 would be easier from that perspective, as well.

17           The plan administrator argues that there's no  
18 additional expense for Mr. Luck. Again, we've addressed  
19 that; there are, unfortunately, additional expenses with  
20 regard to local counsel, which could be avoided if we were in  
21 Connecticut. And I think that this wouldn't create -- and I  
22 understand that this is very important in this context -- an  
23 additional expense for the estate or for the plan  
24 administrator.

25           The plan administrator's lead counsel is

1 Mr. Steinberg. He comes out of the Greenberg Traurig office  
2 in LA. He's got local counsel from Greenberg Traurig who  
3 handles this in Delaware.

4           If this was in Connecticut, he'd replicate the  
5 same thing; in fact, the plan administrator appeared very  
6 briefly in the Connecticut District Court action through a  
7 *pro hac* motion. It's referenced in Exhibit F to our motion  
8 if you look at the end of the docket sheet, which was filed  
9 by a colleague at Greenberg Traurig, who's admitted to  
10 practice in the District Court of Connecticut. So, it would  
11 just be a matter of swapping one of the local Delaware  
12 attorneys for somebody at the firm who's admitted in  
13 Connecticut.

14           And, of course, I'd make a pitch for my fellow  
15 members of the Bar in Connecticut. There's a lot of good  
16 bankruptcy lawyers up there who are cheaper. They're very  
17 good, but they're cheaper than Delaware lawyers, but they're  
18 very good and, you know, there could be a cost-savings there,  
19 as well. So, you know, at a minimum, we're talking neutral,  
20 potentially a cost-savings for the estate, which I understand  
21 is important.

22           Enforceability of the judgment. I see that as a  
23 neutral factor, right, whether it's this District or the  
24 District of Connecticut, I don't think anybody's going to  
25 question the enforceability of those judgments, which brings

1 us to practical considerations that would make trial easy,  
2 expeditious or inexpensive.

3           And this is where, although while we filed the  
4 motion to transfer venue while the district court action was  
5 still pending, not knowing that it was going to resolve, it  
6 doesn't change the fact that there were two years of  
7 experience that was gained by the District Court in  
8 Connecticut overseeing same parties, dealing with, not the  
9 exact issue, but very similar issues, given many of the same  
10 facts, with regard to, you know, Alpha's counterclaims with  
11 regard to Mr. Luck's performance of his duties as CEO and  
12 Commissioner, as well as going the other way, Mr. Luck's  
13 claims under the guaranty, with regard to Mr. McMahon. In  
14 that instance, it was for his compensation promise to the  
15 future. In this instance, it would be a compensation promise  
16 to him that's now been avoided.

17           So, taking advantage of that institutional  
18 knowledge can do nothing but create efficiencies here and  
19 that stands in contrast to where we are in this adversary  
20 proceeding, where we're at the beginning. We're at the very  
21 beginning and Your Honor has not yet had the opportunity, or  
22 the District Court, to really engage on those issues.

23           So, the plan administrator argues that, look, it's  
24 more efficient to litigate it here because there may be  
25 another preference case and we should centralize that, which



1 I get, but as I said at the outset, there is no other  
2 avoidance action. There was a potential claim that's  
3 referenced in the papers and Attorney Steinberg will set me  
4 right if I got it wrong, but I think that may have been  
5 resolved, but, at least, all I can say for certain is as of  
6 today, there's nothing else on the docket.

7           The plan administrator also argued in their papers  
8 that, you know, the pending motion to withdraw the reference  
9 doesn't alter the analysis in any way because bankruptcy  
10 courts can, and sometimes do, adjudicate cases up to trial  
11 and then it passes to the district court. Well, first, the  
12 plan administrator argued in the papers to the district court  
13 that they wanted immediate withdrawal of the reference, which  
14 is our position, as well, from a judicial economy  
15 perspective.

16           But one way or the other, the case is going to  
17 wind up in the district court and, seemingly, the question to  
18 me was, well, where is that more efficient in a court that  
19 has spent a couple of years with these issues or somebody's  
20 who's going to start anew? And I think the answer is  
21 Connecticut, where there's experience with these issues.

22           The next factor, relative administrative  
23 difficulty in the two fora, resulting from congestion of the  
24 Court's docket. We'll stipulate that Delaware is a  
25 preeminent bankruptcy court where it gets a lot of action,

1 and depending on how the economy goes, gets a ton of action.

2 But I think what guides this one is, again, the,  
3 where can efficiencies be gained? And, again, for all the  
4 reasons I'm not going to repeat, but for all those reasons  
5 that there have been two years' experience in Connecticut,  
6 there are efficiencies to be gained there that could do  
7 nothing but help with the relative congestion of both court's  
8 dockets.

9 The next factor is the public policy of the fora.  
10 So, look, here, the connection to this case in Delaware is  
11 that it's a Delaware LLC that can file bankruptcy in  
12 Delaware. Everything else happens in Connecticut here. Mr.  
13 Luck was hired as CEO and Commissioner of Alpha, which had  
14 its headquarters in Connecticut. WWE, which seemed to be  
15 quite involved in Alpha, is headquartered in Connecticut.  
16 Mr. McMahon, one of the principals, who's also a party at  
17 this point, is a citizen of Connecticut. The employment  
18 contract is governed by Connecticut law. The guaranty that's  
19 sought to be enforced against Mr. McMahon is governed by  
20 Connecticut law. You know, everything that happens is kind  
21 of in Connecticut, so, you know, I think that there's a  
22 stronger argument that, you know, having a Connecticut court  
23 preside over that would be more consistent with their public  
24 policy of the two fora.

25 The plan administrator argues that there's a

1 strong interest in adjudicating all avoidance indications in  
2 one centralized case, which is, again, I mean, if this was a  
3 typical bankruptcy case where there'd be 30, 40 preference  
4 actions that are going on, where you'd want -- you wouldn't  
5 want inconsistent judgments on insolvency and a bunch of  
6 similar issues, it would make sense to consolidate it all  
7 before one judge. But we don't have that here.

8           Familiarity with the judge with applicable state  
9 law. This one, I put as a tilt towards favor of transfer  
10 because, while the plan administrator says, Look, there's no  
11 state law issues here, there technically is. There's a  
12 Count 1, which is under 544, which makes reference to the  
13 Delaware Uniform Fraudulent Transfer Act. I think there's a  
14 pretty good argument that it would be Connecticut's Uniform  
15 Fraudulent Transfer Act that should apply under a choice law  
16 analysis. I could say it tilts because it's a Uniform  
17 Fraudulent Transfer Act -- they're not a ton different -- so,  
18 to me, it tilts towards Connecticut.

19           But also that the other factor out there is that  
20 there is this third-party complaint against Mr. McMahon that  
21 has to do with the contractual issue under a guaranty. That  
22 is governed by Connecticut law.

23           Finally, local interests in deciding local  
24 controversies at home. This is really going to bleed over  
25 the same thing as the public, you know, policy of the fora.

1 Again, because the -- so much happened in Connecticut, here,  
2 in this case, the hiring, the performance, the payment, the  
3 places of business where the witnesses are, where the third-  
4 party Defendant is, all of that, to me, is in Connecticut, so  
5 more of a local interest in Connecticut than here.

6           So, for those reasons, it seems -- and, again, I  
7 will concede that, like, this is an unusual circumstance.  
8 This is not what you, you know, (indiscernible) typically in  
9 an avoidance action, but this is that case. This is that  
10 case where those Jumara factors, it makes sense to transfer  
11 the case to Connecticut.

12           So, you know, unless Your Honor has questions,  
13 then we'd ask that the motion to transfer be granted.

14           THE COURT: The only question I have is what's the  
15 process, if this were transferred to the district court in  
16 Connecticut, would it be assigned to the judge who had the  
17 other matter?

18           MR. GOLDSTEIN: I asked this question of my --  
19 some of my colleagues who've clerked in the district court  
20 (indiscernible).

21           THE COURT: Uh-huh.

22           MR. GOLDSTEIN: What I was told the process is, is  
23 this, if the case gets transferred, it would initially go to  
24 the clerk. The process is that you would reach out, on copy  
25 to all parties, to Judge Bolton's chambers. You would go to

1 his courtroom deputy and law clerks and ask that this case is  
2 coming, here's a copy of the complaint, we'd ask that Judge  
3 Bolton consider contacting the chief judge of the district to  
4 ask that it just be assigned to him.

5 Full candor, Judge Bolton could say no. He's got  
6 that discretion, is my understanding in talking to the  
7 clerks, but if he was at all, you know, if he was at all  
8 interested, and I hope he would be given his involvement in  
9 the case, then he would just -- his chambers would reach out  
10 to the chief judge and then a chief judge can make the  
11 assignment. That's the mechanics.

12 THE COURT: And how many judges are there in the  
13 district court in that Connecticut -- is he in a division?  
14 Are they are divisions in district?

15 MR. GOLDSTEIN: It's like --

16 THE COURT: There's three, aren't there?

17 MR. GOLDSTEIN: Yeah, there's Hartford, New Haven,  
18 and Bridgeport. I am not, as I stand here today, I am not --  
19 I could look it up when I sit down -- but I don't know off  
20 the top of my head how many there are. I want to say eight,  
21 but I could be wrong.

22 THE COURT: It just seems that Judge Bolton gets  
23 all the cases that I have that have any connection with  
24 Connecticut; that's why I asked.

25 MR. GOLDSTEIN: He's a lucky guy.

1 (Laughter)

2 MR. GOLDSTEIN: But I'm not sure, to answer your  
3 question.

4 THE COURT: Thank you.

5 MR. GOLDSTEIN: Thank you.

6 THE COURT: Mr. Steinberg?

7 MR. STEINBERG: Thank you. Good afternoon, Your  
8 Honor.

9 THE COURT: Good afternoon.

10 MR. STEINBERG: Mr. Goldberg [sic] says it's a  
11 rare case where you transfer venue of an adversary proceeding  
12 where there are avoidance actions claims; in fact, they fail  
13 to cite a single case in the Third Circuit or any case in the  
14 entire country, where a Bankruptcy Court has transferred  
15 venue of an adversary proceeding that asserts avoidance  
16 action claims. It's no accident that they didn't cite any of  
17 those kinds of cases. There -- Mr. Luck is represented by  
18 very capable counsel.

19 And so, the word "rare," in my view, is an  
20 overstatement. I'm not aware of any Bankruptcy Court that  
21 has transferred venue of an avoidance action claim. But  
22 let's put that to the side for a second.

23 THE COURT: Right. Let's put that to the side for  
24 the moment.

25 MR. STEINBERG: Right.

1           THE COURT: Because the cases I read, and I did  
2 read the cases that were cited in this jurisdiction, they are  
3 either preference cases, which I think are a wholly different  
4 animal than a fraudulent conveyance case, or they're very  
5 distinguishable.

6           MR. STEINBERG: Well, several of the cases we did  
7 cite from Delaware also include -- granted, there are  
8 preference claims, but there are also fraudulent transfer  
9 claims in at least two to four of the cases that we cited.  
10 And so, I don't think that that should be overlooked.

11           And in my view, there's two principal reasons --

12           THE COURT: Okay.

13           MR. STEINBERG: -- why motions to transfer venue  
14 of adversary proceedings which assert avoidance action claims  
15 are not transferred. First is significant weight is given to  
16 the Plaintiff's choice of forum and, second, numerous  
17 considerations under the Jumara test are furthered by having  
18 the Bankruptcy Court where the case is pending, decide the  
19 issues.

20           Luck doesn't dispute the holding of the Barry case  
21 that we cited, which said that due to policy considerations,  
22 there's a strong impetus to maintaining an adversary  
23 proceeding in the home court.

24           So, I'm going to do three things in my argument,  
25 Your Honor. First, I'm going to address the facts and legal

1 issues that are raised in this adversary proceeding. Second,  
2 I'm going to examine the facts and legal issues that were  
3 raised in the Connecticut litigation that was settled. And,  
4 finally, I'll discuss the Jumara factors.

5           So, first, let me turn to what's alleged in this  
6 adversary proceeding. And as Mr. Goldberg correctly pointed  
7 out, there are two preference claims: one for the 90-day,  
8 one for the one-year, and two fraudulent transfer claims.

9           What he doesn't say, and what he said, which in my  
10 view is erroneous, is he says that there are two different  
11 theories for the fraudulent transfer claims. He said one is  
12 lack of reasonably equivalent value and one is failure to  
13 perform. But that's just not so.

14           Both fraudulent transfer claims are based on lack  
15 of reasonably equivalent value. It's our view that  
16 regardless of performance on the part of Mr. Luck, if he was  
17 the greatest Commissioner ever to walk the earth, the amount  
18 of money he received, in no way, shape or form, constitutes  
19 reasonably equivalent value. He was making more money than  
20 commissioners of major professional sports with billions of  
21 dollars in revenue, such as the National Hockey League. And  
22 so, there's no way to look at it.

23           What we mention, though, is that even though,  
24 regardless of how he performed, there's no way that this is  
25 reasonably equivalent value. We --



1           THE COURT: You said that in your brief, but the  
2 complaint has a specific allegation with respect to his  
3 performance, and that it was woefully inadequate.

4           So, what was the point of those allegations if  
5 they're not being used?

6           MR. STEINBERG: I didn't say they're not being  
7 used. In my view, it's more like chicken soup where you say,  
8 It couldn't hurt. You know, our view would be to say that it  
9 doesn't matter how he performed --

10          THE COURT: Okay.

11          MR. STEINBERG: -- but, in this instance, there  
12 are several instances where you can point to facts where he  
13 just didn't do a good job.

14          Now, Mr. Goldberg says, Well, doesn't that change  
15 the whole way that you should look at the case? But let's  
16 look at the facts, they're not complicated. The facts that  
17 we're talking about are not complicated and they're not even  
18 in dispute.

19          Mr. Goldberg makes reference to the fact that  
20 there was Mr. Calloway, who was a wide-receiver, who had a  
21 checkered background, who was hired, which was -- because of  
22 his checkered background, that was contrary to policy.

23          THE COURT: Against policy.

24          MR. STEINBERG: Right.

25          And so, that's not something that's in dispute.

1 There's no question that Mr. Calloway was hired and there's  
2 no question what the policy says.

3 THE COURT: But whether that's -- whether  
4 that's -- whether that is performance that would constitute  
5 something you could base a finding of reasonably -- not  
6 reasonably equivalent value, I don't know. Just saying that  
7 that's not disputed isn't sort of the end of the story, and I  
8 don't know if it's disputed or not. I suspect it's somewhat  
9 disputed.

10 But I don't think the fact that you say that there  
11 are undisputed facts means that you're not relying on it or  
12 that, and when I hear you are, even though it's a backup, I'm  
13 not sure I agree with you on that.

14 MR. STEINBERG: All right. Then, let me assume  
15 that what you're saying is -- not just assume -- if you're  
16 not agreeing with me, let me turn to that, to the import of  
17 that.

18 THE COURT: Yes.

19 MR. STEINBERG: And so, assume, then, that there  
20 are a few facts that are up in the air that they'll dispute  
21 as to whether or not he did a good job or didn't do a good  
22 job.

23 THE COURT: Uh-huh.

24 MR. STEINBERG: There weren't determinations made  
25 about those facts in the Connecticut litigation. The

1 Connecticut litigation, in that litigation, and I guess I'll  
2 turn to the second portion of what I was going to say in  
3 terms of what is alleged there, Mr. Luck argued and sued  
4 because he said he was wrongfully terminated and he was  
5 entitled to a few years going forward for compensation.

6           What we're talking about is seeking to recover the  
7 compensation he already received, all right. Now, the issue  
8 in that case was, Was there cause to terminate Mr. Luck in  
9 that Connecticut litigation? And there was a ruling by that  
10 Connecticut judge where the judge said, You know what? You  
11 didn't give the guy notice and a chance to cure and so,  
12 because you didn't give him notice and a chance to cure, I'm  
13 going to find that you don't have an argument that he  
14 breached the contract.

15           But we're not arguing breach of contract here.  
16 Breach of contract has no bearing on this litigation. And we  
17 cited a couple of cases for you, the Grandparents.com case  
18 and the ECF case, which say you're talking about two  
19 different animals when you're talking about fraudulent  
20 transfer claims and breach of contract. One has nothing to  
21 do with the other. They mention nothing about that in their  
22 reply and they don't try to refute that proposition. They  
23 say nothing.

24           And so, it doesn't matter from a fraudulent  
25 transfer perspective, whether the contract was breached or it

1 wasn't breached, in order for us to prevail. And so the fact  
2 that we raise a few of these issues that the Connecticut  
3 judge did not determine and was not asked to determine, he's  
4 just aware that they were raised, doesn't elevate this to the  
5 status of where this case should be transferred to the judge  
6 merely because in this other litigation involving breach of  
7 contract claims, some of the same facts were referred to.

8           Now, if you look at the four claims that we're  
9 alleging with respect to the preference claims, there's not  
10 even a hint that any of the elements of a preference claim --

11           THE COURT: I would agree with you, but I'm not  
12 focused on the preference claims.

13           MR. STEINBERG: All right. And so, then, let's  
14 talk about the fraudulent transfer claims and in terms of the  
15 factual issues, okay. In the Connecticut litigation, there  
16 was nothing -- nothing touching upon whether the compensation  
17 Mr. Luck received was reasonable. It was not an issue. They  
18 say nothing about it in their papers and that is the central  
19 issue in this litigation, was the amount that he was paid,  
20 was that reasonably equivalent value? It was not an issue in  
21 that litigation, period. End of story.

22           With respect to the other elements that we need to  
23 prove in connection with the fraudulent transfer claims,  
24 issues pertaining to solvency: Where the debtors solvent?  
25 Nothing in that litigation pertained to solvency, nothing at

1 all.

2           And so, really, what's happening here is what  
3 they're doing is they're waving a flag in front of you and  
4 saying, Hey, they made some references to some facts here.  
5 Those same facts were referenced in the other litigation.  
6 And what they said in their papers, which is, I think a  
7 little different than what Mr. Goldberg said in his argument  
8 and in the papers, they said same issues of law and fact were  
9 addressed in there. Now, he said similar.

10           But they weren't the same issues and, in my view,  
11 they weren't, from a legal perspective, in terms of the  
12 issues to be resolved, they were not similar whatsoever.  
13 They were not the same. They were not similar. They were  
14 totally different.

15           This is not a breach of contract case. We are not  
16 proving a breach of contract case in order to get a remedy  
17 here with respect to what we're seeking here on the avoidance  
18 claims. And so, to me, this is a "forest through the trees"  
19 argument on their part; again, they certainly got your  
20 attention by making reference to some of those facts, but ask  
21 yourself, are those facts, you know, do those facts have to  
22 be adjudicated in order for us to get the relief that we're  
23 seeking in the four claims that we've asserted? And the  
24 answer is no.

25           And so, with that being said, you know, let me

1 turn to the Jumara factors, if I may. There are 12 of them  
2 and of those 12, I believe 10 or 11 of them weigh, either in  
3 favor of the Court retaining the case, or are neutral. And  
4 so, I have a very different take on them, obviously, than  
5 Mr. Goldberg did, so let me briefly walk through them.

6 THE COURT: Uh-huh.

7 MR. STEINBERG: The first factor is the  
8 Plaintiff's choice of forum, which obviously, that's in our  
9 favor. But that is, according to the case law, it says that  
10 that weighs heavily in favor of you retaining this case. So,  
11 it's not equal. You don't just put them on a scale and say,  
12 Four over here, four over there, four neutral. This one is  
13 entitled to more weight.

14 The second factor, which certainly I can see,  
15 which is their choice of forum, which is Connecticut. But  
16 the case law that we cite, which they don't refute, says that  
17 this is not given the same weight as the Plaintiff's choice  
18 of forum.

19 The third factor is where the claim arose. And  
20 courts have said when avoidance actions issues are raised,  
21 the essential transaction involves the transfers and the  
22 courts look to where the recipient received the payments.  
23 And Mr. Luck was an Indiana resident and the payments were  
24 sent to him. And so --

25 THE COURT: Well, I thought he worked in

1 Connecticut?

2 MR. STEINBERG: They said that he worked in  
3 Connecticut for a period of time. It's not -- it's my  
4 understanding that the payments were sent to him in Indiana,  
5 but, you know, I don't want to -- that's my understanding.  
6 He was there for a while. He didn't stay there. I don't  
7 believe it's accurate to say that he moved there and that was  
8 his new residence.

9 I believe he worked out of there, you know, for  
10 portions of the week, but that he certainly went home. And  
11 so I don't think that that's where the payments were and  
12 there's certainly no evidence that they've presented,  
13 admissible evidence, that says that the monies were paid in  
14 Connecticut.

15 And so, with respect to that --

16 THE COURT: I'm looking at Judge Walrath's  
17 decision --

18 MR. STEINBERG: All right.

19 THE COURT: -- in RCS about whether the claim  
20 arose elsewhere and where she cites the general law that says  
21 where the underlying contract was performed is not relevant  
22 and you look to where the transfers are. But she cites Hayes  
23 Lemmerz and, in fact, she, in her own case, says, The  
24 performance of the agreement is not at issue.

25 But I think the performance of the agreement is at

1 issue here, that the Plaintiff has put it at issue. It may  
2 be a backup theory, but I think the Plaintiff has put it at  
3 issue and I think that makes it different than a normal,  
4 certainly, preference action and it may make it different  
5 than a normal fraudulent conveyance action.

6 MR. STEINBERG: Although, what we do say, Your  
7 Honor, is that his performance didn't matter because of the  
8 amount of compensation was so high.

9 THE COURT: That's one, but you've got a backup  
10 plan and your backup theory, if you just stuck with that  
11 theory maybe, but your backup theory is that, And, oh, by the  
12 way, his performance was poor, and that's another reason.

13 MR. STEINBERG: All right.

14 THE COURT: That's how I read the complaint.

15 MR. STEINBERG: It's a fair reading of the  
16 complaint.

17 THE COURT: Okay.

18 MR. STEINBERG: But, again, from -- we make  
19 reference to that only for the purpose of saying that it's a  
20 tertiary argument to where we're going. But even if you say,  
21 Okay, so his performance -- you want to look at his  
22 performance in Connecticut, then, as to those two claims,  
23 yes; as to the preference claims, no.

24 Certainly, his performance had nothing to do --  
25 the preference claims, money came in. It didn't matter where



1 he worked. And so, if you want to say based upon that that  
2 half the claims, you know, at least peripherally involve --  
3 may involve performance --

4 THE COURT: I'm not going to split the claims up.  
5 I'm not going to keep the preference and send the fraudulent  
6 conveyance; they're all going to be tried together.

7 MR. STEINBERG: Right. Okay.

8 All right. So, if you were weighing in that  
9 favor, then you could give that one to them, if that's what  
10 you think, but the rest of the -- let me go through the rest  
11 of Jumara --

12 THE COURT: Uh-huh.

13 MR. STEINBERG: -- and let's see how the scales  
14 weigh at the end of the day.

15 THE COURT: Yeah, no. I've got the 12 factors.  
16 One of my colleagues will say, If you have 12 factors, it  
17 means nothing. What do you do with 12 factors? But go  
18 ahead.

19 (Laughter)

20 MR. STEINBERG: All right. Location of books and  
21 records. The case authority that we cited said absent  
22 evidence by the Movant that there are significant documents  
23 at issue, the courts have said this factor favors denial of  
24 the motion. They don't cite any countervailing evidence.  
25 They don't cite any -- they have no evidence at all

1 concerning the documents here. And so, based upon the  
2 authority that we cite, this factor should be viewed in our  
3 favor.

4 THE COURT: Maybe. I mean, there are certainly no  
5 documents in Delaware and the documents, if there are going  
6 to be, are probably in Connecticut, wouldn't you say? I  
7 mean, that's where the company's headquarters were and even  
8 the transfer documents are going to be in Connecticut.

9 MR. STEINBERG: There'll be some documents there,  
10 but the case law says there needs to be significant documents  
11 involved before this becomes an issue to weigh in favor of  
12 transfer. And there's no evidence of significant  
13 documentation. We've got an employment contract and we've  
14 got -- they've mentioned four issues, you know, of fact as to  
15 whether or not he attended some meetings, whether this  
16 receiver was of character. You're not talking about a heavy  
17 document case here, so --

18 THE COURT: That's probably true.

19 MR. STEINBERG: The next factor is convenience to  
20 the parties. And courts have said absent an evidentiary  
21 showing of inconvenience, the factor favors denial. And they  
22 haven't presented evidence of inconvenience here.

23 There's a declaration filed by Mr. Luck that's a  
24 few paragraphs long that doesn't really say much of anything  
25 in terms of setting forth how he would be inconvenienced.

1 Certainly, he says it's his preference that it be filed  
2 there, but there are no facts set forth before you which  
3 would explain why it would be so inconvenient, and it's their  
4 burden of proof on this issue.

5 And so, given the cases that we've cited, they  
6 haven't made a showing of inconvenience. They've just said  
7 he prefers Connecticut and that's insufficient.

8 The next factor is convenience of the witnesses,  
9 but only if unavailable for trial. So, where's the evidence  
10 of this?

11 If you look at the Luck declaration, he just said,  
12 Well, I interacted with some World Wrestling Entertainment  
13 folks; that's all he says. He doesn't explain in that  
14 declaration why they're essential witnesses. And the only  
15 thing I read in the reply brief and I heard from Mr. Goldberg  
16 is he said, Well, some of them were involved in negotiation  
17 of the contract, but that's not even at issue in this  
18 litigation, because there's no dispute the contract was  
19 entered into. There's no dispute as --

20 THE COURT: Well, why isn't it? If you're saying  
21 that the consideration was excessive, regardless, then why  
22 aren't the negotiations important to that?

23 MR. STEINBERG: Because there's an integration  
24 clause in the contract, so evidence relating to the  
25 negotiations would be subject to exclusion. But what we're

1 saying is what was agreed to was the \$5 million annual  
2 compensation, plus \$2 million bonus every year, regardless of  
3 whether it should be earned or not.

4           So, there's no dispute that it's \$7 million. What  
5 difference does if the negotiations started and Mr. Luck  
6 said, I want \$10 million and the other side said, Well, I'll  
7 give you \$5 million and they ended up at \$7 million, it  
8 doesn't really matter, because --

9           THE COURT: Well, what if the negotiations  
10 included a look at what other people were making? I don't  
11 know what they included, but I don't know that I agree that  
12 the negotiations aren't necessarily relevant. I don't know  
13 that I agree with that. I don't think I can determine that  
14 now.

15           MR. STEINBERG: All right. Then ask yourself,  
16 What evidence do you have in front of you?

17           THE COURT: I know where the company is located.  
18 I know where the -- where he worked out of. There's no  
19 question about that, is there, really?

20           MR. STEINBERG: But when they say there's WWE  
21 employees who are involved, that's what --

22           THE COURT: Shared services. They told me there  
23 were shared services and I sort of vaguely recall that.

24           MR. STEINBERG: There were shared services for  
25 accounting, okay. There were -- where WWE provided

1 accounting services for Alpha, that's where the shared  
2 services came in.

3 But in terms of negotiating contracts or being  
4 involved in the negotiations of this employment contract,  
5 frankly, the first I've ever heard of anyone from a WWE being  
6 involved was when they raised it in their reply brief. And  
7 we've interacted with Mr. McMahon, who was the party involved  
8 in here, and we got documents. I've never seen anything  
9 tying WWE into it, so this is --

10 THE COURT: Mr. McMahon negotiated the contract?

11 MR. STEINBERG: Mr. McMahon was involved in the  
12 contract.

13 THE COURT: Well, he's in Connecticut.

14 MR. STEINBERG: He is in Connecticut, but he's  
15 also a party to this litigation. So, this standard is  
16 inconvenience to the witnesses. Mr. McMahon is a party, and  
17 so it's an apples and oranges. Mr. McMahon will be  
18 testifying here. This is not a case of a witness who will  
19 not be around to testify. And so --

20 THE COURT: But you would agree that I don't have  
21 subpoena power over anybody in Connecticut?

22 MR. STEINBERG: I do agree with that. But, again,  
23 in terms of what you need here, I would say there's no  
24 showing here that you need that subpoena power for any  
25 witness who will be important for here, for the disposition

1 of this matter, other than Mr. Luck and Mr. McMahon.  
2 There's -- you haven't been given any names and you haven't  
3 been told what any of these people will actually testify to.

4 And so, in that vacuum, while you could say it's  
5 theoretically possible, that's not the test. The test is  
6 what's the evidence in front of you, with respect to this  
7 factor, as opposed to conjecture about who or who may not be  
8 needed in connection with this matter.

9 And so, with respect to that, again, I guess what  
10 I also want to underscore is, even if you accept their  
11 arguments that there could be people in Connecticut, they  
12 also have to show that they would be unavailable for trial.  
13 It's not just that they may be beyond your subpoena power,  
14 but that they will be unavailable and they haven't made that  
15 showing.

16 THE COURT: Well, I tend to think that's the case.  
17 These aren't -- this isn't a situation where you have a party  
18 who's an ongoing business who can bring their own employees  
19 and make them available. That is not the case here. We have  
20 Mr. Luck, who has no ability to compel anybody to be here.  
21 And even Alpha Entertainment has no ability to compel anybody  
22 to be here and doesn't exist.

23 I'm more inclined to say that that's, you know,  
24 the usual situation where we look at that is when we have two  
25 civil litigation and we have two parties and they can compel

1 their own people to be here, but this is not that situation.  
2 If there are witnesses and they are in Connecticut, and maybe  
3 that's too hypothetical, I may -- I'll think about that --  
4 maybe that's too hypothetical -- there's no way that either  
5 side actually can compel them to be here.

6 MR. STEINBERG: I understand your point and I  
7 guess I want to focus on what it is that they've  
8 demonstrated, in terms of the evidence, and to who they are  
9 and who has the burden of proof, and I don't think that  
10 they've made their case.

11 With respect to the issue of enforceability of the  
12 judgment, the case law that we cited says that absent a  
13 showing by the Movant, that a judgment by the home court  
14 won't be entitled to full faith and credit, that weighs in  
15 favor of denial of the motion. It's not neutral, as Mr.  
16 Goldberg says. The cases say that it favors denial.

17 So, now, let's turn to the next test, which is  
18 practical considerations, that would make the trial easy,  
19 expense -- excuse me -- expeditious or inexpensive. I've  
20 heard from Mr. Goldberg that, you know, they -- they're going  
21 to incur the expense of local counsel if they have a trial  
22 here. They vanity quantified what that will be and,  
23 certainly, they haven't tied that in with any case authority  
24 to say that that tips the scales and it should result in the  
25 case being tried, other than in the home court. There's no

1 evidence at all to try to quantify the monetary savings if  
2 this case were tried here, as opposed to Connecticut.

3           Secondly, these are bankruptcy issues that are  
4 going to be decided. And what they're talking about is  
5 having a Connecticut District Court case -- District Court  
6 decide these issues. I think what's likely to happen if the  
7 case remains here, is it will be in front of Your Honor until  
8 it's ready for trial. And then when it's ready for trial, if  
9 we go to trial, I think it'll be tried before a district  
10 court judge in Delaware.

11           I don't -- from our perspective, in terms of what  
12 would make it easier and expeditious, I think we're dealing  
13 with judges in Delaware who have a lot more experience  
14 dealing with bankruptcy avoidance action claims, than other  
15 judges in almost any other part of the country. And so, in  
16 terms of understanding the legal issues and cutting to the  
17 chase in terms of what's important with respect to these  
18 issues, our view is that we think we're far better off here  
19 with the expertise that this Court has and with the expertise  
20 that the district courts have in having it resolved here.

21           And by that, I certainly take -- don't mean to  
22 sleight Judge Bolton, but I just don't believe that the  
23 matters in Connecticut, where you're dealing with avoiding  
24 action matters in any way compare with the degree of and  
25 magnitude of these issues that the Delaware courts consider



1 on a daily basis on these issues. And I don't think that  
2 that should be overlooked.

3 I'd also want to point out, Your Honor, that this  
4 litigation is the last major item in this bankruptcy case,  
5 the Alpha bankruptcy case. It needs to be resolved in order  
6 for us to close the case. And I think that it is more  
7 efficient for us to have this Court preside over things and  
8 make sure that things get channeled and handled in a way so  
9 that we can get this case resolved and we can get this  
10 bankruptcy case closed.

11 And if this case is transferred to another  
12 district, then the ability to oversee the administration of  
13 this case and the handling of this adversary proceeding so  
14 that we can close the case is at issue, and I don't think  
15 that's something that should be overlooked.

16 Mr. Luck points to the motion to withdraw the  
17 reference, but he doesn't quarrel with the fact, again, that  
18 this proceeding will likely stay before this Court. And,  
19 again, our point is that we think the Delaware courts have  
20 more experience dealing with avoiding action claims.

21 He also argued that the estate litigated claims in  
22 the Connecticut litigation, that just isn't so. Mr. Hurwitz  
23 was never a party to that proceeding. We just assigned  
24 claims.

25 THE COURT: The estate claims were absolutely

1 litigated in the Connecticut litigation.

2 MR. STEINBERG: But not by Mister -- they were  
3 assigned.

4 THE COURT: I don't care by whom.

5 MR. STEINBERG: They were assigned.

6 THE COURT: The debtor was up there. The debtor  
7 was up there -- an estate representative was up there. I  
8 totally disagree with that.

9 MR. STEINBERG: When you say an estate  
10 representative was up there --

11 THE COURT: The estate representative was up  
12 there. Mr. McMahon was assigned these claims to bring on  
13 behalf of the estate and himself and there was a sharing. I  
14 read the stipulation. I went back because I actually didn't  
15 remember it and he -- it was there. The estate's claims were  
16 being litigated up there by Mr. McMahon, but they were, and  
17 that was a debtors' choice.

18 MR. STEINBERG: All right. I think that the  
19 claims were just assigned, but let me take your position --

20 THE COURT: Well, they were assigned, but the  
21 estate was the beneficiary of, what, 66 percent or  
22 something --

23 MR. STEINBERG: Correct.

24 THE COURT: -- of the recoveries.

25 MR. STEINBERG: That's correct.

1           THE COURT: Right. So, those estate claims were  
2 assigned, but they were the estate claims.

3           MR. STEINBERG: Well, those estate -- if you want  
4 to call -- characterize them as estate claims, I understand  
5 where you're coming from, but those estate claims were breach  
6 of contract claims.

7           THE COURT: Uh-huh.

8           MR. STEINBERG: They were not fraudulent transfer  
9 claims.

10          THE COURT: Uh-huh.

11          MR. STEINBERG: They were not preference claims.

12          THE COURT: Uh-huh.

13          MR. STEINBERG: And so, the fact --

14          THE COURT: It's kind of interesting how it  
15 happened. I don't know what the impact of that is, but it  
16 was kind of interesting.

17          MR. STEINBERG: Well, from the estate's  
18 perspective, it had everything to gain and nothing to lose.

19          THE COURT: Sure. It didn't have to foot the cost  
20 of the litigation and it gets 66 or 67, whatever it is -- I  
21 don't want to be wrong -- of the proceeds. But the estate's  
22 claims were litigated up there.

23          MR. STEINBERG: All right. And so -- now, there  
24 was no determination with respect to those claims --

25          THE COURT: Mr. McMahon agrees to assert the

1 estate claims on behalf of and in the name of Alpha  
2 Entertainment; that's what the stipulation says. And then  
3 the estate gets 67 percent of the collected recovery.

4 MR. STEINBERG: Right. Okay.

5 And so, those claims were never litigated to  
6 judgment, but even if they were litigated to judgment, the  
7 Grandparents.com case and the EBC case say it doesn't matter  
8 if there's a breach of contract claim that you can win or  
9 lose. That has nothing to do with your ability to bring  
10 avoidance action claims, so --

11 THE COURT: Well, it may -- yeah, those are two  
12 different things, though. Those are two different -- that  
13 doesn't have anything to do with whether, in fact, a judge  
14 has some familiarity with the underlying causes of -- the  
15 underlying facts that create the causes of action. They are  
16 separate claims. You could have brought the estate claims  
17 here, too -- the -- what you're calling the "estate claims,"  
18 the 544 claims --

19 MR. STEINBERG: Uh-huh.

20 THE COURT: -- and the preference actions could  
21 have all been brought together and it wasn't. It could have  
22 been.

23 MR. STEINBERG: If we wanted to get embroiled in  
24 that litigation, yes. But, I mean, there's a lot of reasons  
25 why they weren't.

1           But I guess the point to underscore, Your Honor,  
2 is I don't -- I certainly can't deny that the judge knows  
3 some of the facts relating to this underlying litigation --

4           THE COURT: Uh-huh.

5           MR. STEINBERG: -- but this underlying  
6 litigation -- the facts that he knows are not very  
7 complicated facts. Was there an employment contract? There  
8 was an employment contract. Was Mr. Luck terminated? Yes,  
9 but that's irrelevant. Was there cause to terminate him?

10          THE COURT: I don't know that that's irrelevant.

11          You're saying that his termination is irrelevant  
12 to the constructive fraudulent conveyance claim?

13          MR. STEINBERG: Whether he was -- whether the  
14 termination was a breach of the contract or not is irrelevant  
15 to the outcome of fraudulent transfer claim.

16          The fact that he was terminated is certainly is a  
17 fact that we can point to. But the issue in that Connecticut  
18 litigation was, were there grounds to justify that  
19 termination, and that's what was litigated in front of the  
20 judge, and we're not litigating that in front of that judge.

21          And so, you know, there could be any number of  
22 cases where a debtor could be involved in pre-petition  
23 litigation with a party and where it could be pending in  
24 another forum that's a non-bankruptcy court. And so, is it  
25 going to be the rule of law that because a debtor engaged in

1 litigation involving pre-petition, non-avoiding action  
2 claims, that because of that fact, that if a debtor wants to  
3 bring avoiding action claims, that the -- that those avoiding  
4 action claims should go to the Court, that --

5 THE COURT: No, but I don't think those are our  
6 facts. And I also don't think there's any rule of law on  
7 that. I think this whole 12 factors is obviously a weighing  
8 and a balancing thing. There's no rules of law in connection  
9 with this.

10 I think you look at each case on its own and you  
11 make a determination on it, so I don't think it is. But I'm  
12 looking at your cite and I will say, I didn't pull this case.

13 MR. STEINBERG: Which one is that, Your Honor?

14 THE COURT: I didn't pull the EBC I case, which  
15 you said stands for the proposition that a transfer may be  
16 fraudulent, even if it's made, in accordance with the terms  
17 of a contract. Yeah, that's probably -- that's true. But I  
18 didn't -- so, I didn't read it, because I don't have any  
19 problem with that proposition.

20 But to say that they're wholly -- to say that a  
21 breach of contract action could not have some underlying  
22 facts and be somehow relevant to a fraudulent conveyance  
23 action, I think, is very different than saying a transfer may  
24 be fraudulent, even if it is made in accordance with the  
25 terms of a contract. Those are two different propositions.

1 MR. STEINBERG: I understand what you're saying.

2 And in this instance, the breach of contract  
3 claims were never adjudicated in the Connecticut litigation.

4 THE COURT: No, but the Court issued an 80-page  
5 summary judgment ruling, making a lot of findings, with  
6 respect to the pre-petition conduct.

7 MR. STEINBERG: As I read that decision, much of  
8 it is devoted to whether there was cause for termination and  
9 the issue of whether notice was given and an opportunity for  
10 cure. And so, the Court didn't make it -- I didn't read a  
11 determination in that 80-page ruling that said, You know  
12 what? Mr. Luck did a really good job, and, you know, these  
13 issues, with respect to his performance, either were or were  
14 not egregious or improper. I didn't read it that way.

15 What -- how I read it was that even if these  
16 things took place, if you don't give the guy notice and a  
17 chance to cure, it's improper to terminate it.

18 And so, again, I think you're talking about four  
19 or five issues that Mr. Goldberg identified that are not  
20 complicated and, again, I don't see it as being very much in  
21 dispute. I mean, there were issues of whether he attended  
22 meetings after COVID hit and there's no dispute that Mr. Luck  
23 didn't attend certain meetings. That's not complicated. It  
24 doesn't involve --

25 THE COURT: I don't know why he didn't attend

1    them.

2                   MR. STEINBERG:   Okay.   But that wasn't -- in that  
3   80-page ruling, you won't see any discussion about why or  
4   what -- why Mr. Luck didn't attend those meetings or not.   I  
5   don't think you'll see any evidence adduced on that issue.  
6   So, that judge knows about that much about that issue as you  
7   do, from the way that I look at things.

8                   And so, again, I think that you're absolutely  
9   right that this judge was involved with the -- this district  
10  court judge who doesn't do bankruptcy, I'm sure, on a day-to-  
11  day basis, was involved with respect to aspects of this  
12  contract, where there were questions about Mr. Luck's  
13  performance, but I think that's as far as it goes.   And I  
14  don't think those four or five facts that we're talking about  
15  are so important that you should overlook what I view are the  
16  central issues, the central insolvency and bankruptcy issues  
17  that are raised in this litigation.

18                   And those central issues pertain to insolvency and  
19  reasonably equivalent value, and the 547(b) factors.   And if  
20  you put them on a scale side-by-side and say, What's the  
21  relevant -- the relative import, with respect to those things  
22  and what's going to have to actually be determined in this  
23  litigation, I think the balance weighs far heavier in favor  
24  of the bankruptcy issues that were not adjudicated or not  
25  even addressed in that litigation versus the few factual



1 issues that were.

2 THE COURT: But your argument here is on you want  
3 a bankruptcy judge and not a district judge. I don't think  
4 there's any cases that talk about that. And, certainly, a  
5 district court judge is more than capable of deciding these  
6 issues and a district court judge -- in fact, that's where  
7 the jurisdiction lies in the district court. That's where  
8 bankruptcy jurisdiction lies.

9 So, I don't think there's any case that turns on  
10 that issue, whether it's a bankruptcy judge or a district  
11 judge that decides it.

12 MR. STEINBERG: I'd agree with that and that's not  
13 the point that I'm trying to make.

14 The point I'm trying to make is that the  
15 bankruptcy and district court judges in Delaware, in terms of  
16 their experience in dealing with avoiding action claims, have  
17 extensive experience in terms of doing so, which is why this  
18 is our preferred forum and why we chose to file this action  
19 here. It's because of the expertise of the judiciary in  
20 connection with this matter and, again, no sleight is  
21 intended of the Connecticut District Court judge. I don't  
22 have any question that he's a very capable jurist, but to the  
23 extent you are talking about familiarity, I don't think that  
24 familiarity should stop at just these few factual questions.

25 I think familiarity should also be viewed with

1 respect to the legal issues that are being called upon to be  
2 decided here. And so, when you look at it from the  
3 perspective of familiarity of the legal issues, I think that  
4 weighs in favor of this Court, the Delaware Court, district  
5 court and bankruptcy court, retaining this case.

6 Let me move on to the other factors, the one of  
7 relative administrative difficulty, due to congestion. The  
8 case law that we cited said absent a showing by the  
9 movement -- the Movant, concerning congestion, the factor  
10 favors denial. They didn't present any evidence of  
11 congestion in Connecticut or here, zero, and their failure to  
12 do so results in this factor weighing in our favor.

13 And, again, question don't know what the situation  
14 is going to be in Connecticut, but we do know that until this  
15 case is -- this adversary proceeding is resolved, we're not  
16 going to be able to close the case, and so --

17 THE COURT: So, why wasn't this brought sooner?  
18 Why'd you wait until, what, two years, to bring this case if  
19 this is what's going to -- if that is what's holding up  
20 closing the case?

21 MR. STEINBERG: There were extensive settlement  
22 discussions. I will say to you we -- we've settled -- there  
23 was another adversary proceeding reference -- potential  
24 adversary proceeding reference (indiscernible) and we were  
25 able to settle that without the need to have the expense.

1 And we were hopeful that the same could happen here.

2 And there were ongoing things going on in the  
3 Connecticut litigation that impacted our ability to sort of  
4 get attention and focus for some of the parties in that case  
5 who we believe have exposure here. And so, the resolution of  
6 that case, in our view, opened the door for opportunities to  
7 get this matter resolved.

8 And, you know, it had been our understanding that  
9 that case was going to settle sooner than it did. But, you  
10 know, it was always our hope that we wouldn't even have to  
11 file this adversary proceeding. And, again, we filed it when  
12 we did because we wanted to make sure that no statute passed,  
13 but it was not because we were twiddling our thumbs or not in  
14 communication. And we did 2,000 -- we did --

15 THE COURT: Well, you broke up the causes of  
16 action.

17 MR. STEINBERG: Pardon me?

18 THE COURT: You broke up the estate's claims  
19 against Mr. McMahon, at least, right. You broke up the  
20 claims, so --

21 MR. STEINBERG: We did a cost-benefit analysis in  
22 connection with what was in the best interests of the estate.  
23 If we felt those claims were very strong and worth pursuing,  
24 you know, such as these claims that we're bringing here, we  
25 would have brought them here. And so, you know, we made a

1 determination based upon what we saw.

2 But we did discovery and other things before this  
3 lawsuit was filed, so, you know, I just want to underscore  
4 that this is not something where we just sat on our hands and  
5 filed the adversary proceeding, you know, just before the  
6 deadline.

7 So, turning back to that point, which is  
8 difficulty due to congestion, that factor weighs in favor of  
9 what we are -- our position.

10 The next one is public policy of the fora. Luck  
11 doesn't dispute that Alpha is a Delaware LLC. Public policy  
12 favors resolving disputes involving a Delaware entity in  
13 Delaware, so that factor should favor us.

14 Familiar --

15 THE COURT: Well, doesn't Connecticut -- isn't  
16 this neutral? Doesn't Connecticut policy favor resolving  
17 issues for Connecticut businesses in Connecticut and conduct  
18 that happened in Connecticut, in Connecticut? Isn't this  
19 more of a neutral factor?

20 MR. STEINBERG: I'm not going to quarrel with you  
21 if you say it's neutral, but I do think that the case law  
22 says that it's -- that you look to where the entity is  
23 formed.

24 THE COURT: Let me see. I don't think it all says  
25 that. Some of it probably does, but I think one of the ones

1 I read -- there's Judge Walrath's decision.

2 (Pause)

3 THE COURT: Yeah. In RCS, the Court, looking at  
4 public policies of the fora recognizes the centrality public  
5 policy and how transferring the venue of an avoidance action  
6 creates a slippery slope. But here, she says:

7 Here, like other Chapter 11 cases, the Plaintiff  
8 is pursuing multiple avoidance actions. Transfer would be a  
9 burden, therefore, public policy strongly keeps the --  
10 supports keeping the adversary proceeding in Delaware.

11 So, she's weighing the issue and she's saying,  
12 Yeah, this is, like in Hechinger, RCS has all -- has  
13 hundreds, if not thousands -- she's quoting Hechinger.

14 But we don't have that here. We have one  
15 adversary proceeding, so how does that fit into the public  
16 policy factors that, for example, Judge Walrath considered in  
17 RCS?

18 MR. STEINBERG: I don't have that case right in  
19 front of me as you're speaking. But in terms of the public  
20 policy of the forum, I thought that to be a different issue  
21 than the one we're saying you don't want a potentially  
22 inconsistent determinations on avoiding action claims, which  
23 could fall into the practical considerations test, as opposed  
24 to the public policy fora.

25 THE COURT: I don't know. That's what Judge

1 Sontchi does in Visteon. He has the same thing, public  
2 policy. Transferring this adversary proceeding to Michigan  
3 would harm the public policy of centralizing bankruptcy  
4 matters in maximizing the recovery of creditors. It would  
5 set a troubling precedent for other preference actions,  
6 opening the door to transfer them away from the forum of  
7 Visteon's Chapter 11 case. But, again, I don't have that  
8 here. That seems to be what the courts are considering, in  
9 terms of public policy, at least those two. And they all  
10 make a point of saying -- they both, those two make a point  
11 of saying they have a lot of preference actions.

12 MR. STEINBERG: Right. I think that's an additive  
13 factor on the public policy. I still think that the public  
14 policy argument that disputes involving a Delaware entity  
15 should be resolved in Delaware still stands because Alpha is  
16 a Delaware entity.

17 THE COURT: Okay. But I think Connecticut has an  
18 equally strong public policy to say that companies that are  
19 doing business in its state, they have an interest in  
20 resolving those controversies, even if they are incorporated  
21 elsewhere. Why doesn't Connecticut have an equally strong  
22 public policy?

23 MR. STEINBERG: All right. So, then, if you want  
24 to say it's neutral, then it's neutral.

25 THE COURT: I'm just questioning your authority

1 here, because I'm not seeing the same -- that's why I say, I  
2 think this is an individual situation. I'm not sure there's  
3 a law that decides this matter.

4 Okay. Let's go to our next one.

5 MR. STEINBERG: Okay. Familiarity of the judge  
6 with applicable state law. The preference claims, obviously,  
7 are certainly not state law claims.

8 THE COURT: Uh-huh.

9 MR. STEINBERG: The 548 claim is not a state law  
10 claim.

11 THE COURT: Well, one of them is.

12 MR. STEINBERG: They're actually not --

13 THE COURT: Oh, not 548, the 544 claim is.

14 MR. STEINBERG: The 544(b), they cited in a reply  
15 brief that they make the argument, but I would call the  
16 Court's attention to In re EPD investment Co. LLC, 523 B.R.  
17 680, 685. It's a bankruptcy appellate panel decision that  
18 the Ninth Circuit decided in 2015 where that Court said  
19 that 544(b) is a right created under the Bankruptcy Code to  
20 bring a state law or other law avoiding claims. It's not an  
21 action to assert a state law creative right. That's what  
22 that case says.

23 And so, you look to state law, but it is not a  
24 state law creative right. 544(b) is a federal claim and  
25 that's what EDP [sic] --

1           THE COURT: I don't think I agree with that. The  
2 five -- no, I don't think I'd agree with that.

3           No, it creates the ability of a trustee to bring  
4 the claim, but it is a state law claim. Without 544, the  
5 bankruptcy trustee couldn't bring it.

6           MR. STEINBERG: Correct.

7           THE COURT: That's a different issue. It permits  
8 them to bring it, but it's a state law. Fraudulent  
9 conveyance is a quintessential state law claim. It exists  
10 independently of the Bankruptcy Code, absolutely.

11           MR. STEINBERG: Certainly, state law avoiding  
12 actions, I don't quarrel with you, but because of the fact  
13 that the statute, then, enables the trustee to bring a  
14 fraudulent transfer claim under 544, is 544(b), which is a  
15 federal claim --

16           THE COURT: So, whose law do I apply? So, when  
17 I'm looking at that state law claim -- no. You're -- when  
18 I'm looking at this federal claim, you say, under 544, what  
19 law do I apply? Where's the federal common law that applies  
20 that?

21           MR. STEINBERG: I think under this you would apply  
22 the state law avoiding action in Connecticut. So, I agree  
23 that you would look to Connecticut law, but it's --

24           THE COURT: Wouldn't that govern it?

25           MR. STEINBERG: Yes.



1 THE COURT: So, how is this helping you?

2 MR. STEINBERG: Because the issue is the  
3 applicability of state law. And, again, I fall back on the  
4 language in the EDP case -- the EPD case that says it's a  
5 federal law claim.

6 THE COURT: What bankruptcy judges were on that  
7 panel?

8 MR. STEINBERG: I can't answer that question, as I  
9 sit here.

10 THE COURT: Yeah, I disagree with them. Based on  
11 the way you're characterize it, I disagree with them. I  
12 think this is no different than in Cybergenics that talks  
13 about fraudulent conveyance claims, a Third Circuit case that  
14 talks about it, and it distinguishes. It's the ability to  
15 bring it. The cause of action itself isn't an estate claim;  
16 it's the ability to bring a cause of action that the trustee  
17 has.

18 So, based on what you're saying, I disagree.

19 MR. STEINBERG: All right.

20 THE COURT: But in any event, what I think I have  
21 to look to, or any judge doing this has to look to, is  
22 Connecticut fraudulent conveyance act, which may not be that  
23 different from Delaware, because it's uniform, but  
24 nonetheless, I would look to Connecticut state law.

25 MR. STEINBERG: That -- you just made the point I

1 was going to make, that it's under the Uniform Voidable  
2 Transfer Act, I didn't see a difference between the Delaware  
3 and the Connecticut statutes; otherwise, I would have raised  
4 it and said, Ah ha, here's the distinction between the two  
5 and here's why we're prejudiced or not prejudiced, but --

6 THE COURT: Well, the complaint brought it under  
7 Delaware law.

8 MR. STEINBERG: Uh-huh.

9 THE COURT: But I think it's probably Connecticut  
10 law. I don't know. I haven't had it briefed to me.

11 MR. STEINBERG: All right. The last factor is the  
12 local interests in deciding local controversies at home. And  
13 courts have said disputes involving amounts owed to the  
14 bankruptcy estate should be decided by the home court. And  
15 so, in our view, this favors denial of the motion.

16 THE COURT: Okay.

17 MR. STEINBERG: So, in terms of tallying up here,  
18 well, when I opened the argument, I said 10 or 11. I think  
19 you've certainly given me pushback on several of those, but I  
20 still think that if you were just looking at numbers, you  
21 would say that the majority of the factors still favor the  
22 Court's retention of it.

23 There is the Plaintiff's choice of forum, which is  
24 the most important factor, which shouldn't be overlooked.  
25 And there's the holdings that say that there's a strong

1 presumption in favor of maintaining venue, and I don't  
2 believe Mr. Luck has presented evidence to rebut that  
3 presumption.

4           Again, at bottom, Your Honor, I concede to you  
5 that, you know, some of those facts certainly were in front  
6 of the Connecticut judge, but I think in terms of the legal  
7 issues and the most important facts that are central to the  
8 adjudication of these disputes, they were not. And so, all I  
9 would say is, it's a forest through the trees. I acknowledge  
10 that they've got certain facts that we may reference to -- I  
11 can see that -- but it's the important facts that you would  
12 have to look to and the legal issues that need to be decided  
13 that were not in front of that Judge.

14           And so, I think that given that, that it would be  
15 appropriate for this Court to deny the transfer of the venue,  
16 allow us to proceed, allow this Court to ensure that the case  
17 gets administered in a timely fashion so that we can wrap up  
18 this litigation and wrap up the bankruptcy estate. And, you  
19 know, maybe we will get the Connecticut Judge Bolton who  
20 presided over the case, maybe we won't. We don't know that  
21 as we're standing here and we don't know what the timeline is  
22 or how long it will take for things to get adjudicated if you  
23 transfer venue.

24           THE COURT: Well, we don't know here either,  
25 because as you say, it's going to be in front of the district

1 court, because, among other reasons, a Plaintiff requested a  
2 jury trial. So, the Plaintiff, why didn't he just file it in  
3 the district court? You demanded a jury trial, so why even  
4 file it here? Why's it in front of me?

5 MR. STEINBERG: You know, from our perspective, we  
6 just felt it was best to file it here and go through the  
7 withdrawal process.

8 THE COURT: Okay.

9 MR. STEINBERG: Thank you, Your Honor.

10 I thank you for indulging me --

11 THE COURT: Oh, certainly.

12 MR. STEINBERG: -- and you've been very patient in  
13 terms of allowing me to go through that presentation.

14 THE COURT: It's been interesting. No, that's  
15 exactly what you should have done. That's what argument's  
16 for.

17 MR. GOLDSTEIN: Your Honor, I just have a few  
18 cleanup items here. There are lots of facts in dispute.  
19 You're not going to be too surprised by that.

20 The complaint paragraphs 15 through 23 make wide-  
21 ranging allegations about lack of performance of doing his  
22 job, which start with phrases like "among other things,"  
23 which makes me think to defend the case, you have to put on  
24 evidence of doing your job, which is wide-ranging.

25 With regard to evidence of, that, you know, where

1 the claim arose, in the declaration we were discussing, Mr.  
2 Luck does say, when I don't think it's controversial, that he  
3 moved into a hotel in 2018 and then he got a town -- he  
4 bought a townhouse in Greenwich, Connecticut, during his time  
5 when he worked at Alpha.

6           The books -- I'll skip that. With regard to cost  
7 for Mr. Luck, Your Honor knows every time -- I've been  
8 practicing for 16 years -- a lot of time, I've had to come  
9 down here and see my friends at Bayard. They have to come to  
10 court with me when I come to court here. They're -- they  
11 look and they're great lawyers and they look at everything we  
12 file and review it and made good comments. That's a cost  
13 every time we do something. So, I think Your Honor can take  
14 notice of those -- that those costs are just part of  
15 litigating any case in Delaware with local counsel.

16           THE COURT: They are, but I'm not sure they're a  
17 reason to transfer.

18           MR. GOLDSTEIN: The --

19           THE COURT: Let me ask this general question.  
20 Mr. Steinberg, on multiple -- for multiple of these factors  
21 said Mr. Luck has presented no evidence; no evidence of this,  
22 that, or the other. What do I do with that, because we did  
23 not have an evidentiary hearing?

24           MR. GOLDSTEIN: Well, I don't know if any facts  
25 are in dispute. So, a lot of things that we are relying on

1 are of record and I was going to point out to a few of those.

2 THE COURT: Okay.

3 MR. GOLDSTEIN: So, for example, Document 195 is  
4 the statement of financial affairs. I didn't print out the  
5 whole of it, because it's enormous, but page 285 to 287 lists  
6 who are the officers of the company in the statement of  
7 financial affairs, which are Basil DeVito and Jeffrey  
8 Pollock, both of whom are listed with an address in  
9 Connecticut.

10 If we look at the complaint at paragraph 22, it  
11 talks about that Luck's business shortcomings necessitated  
12 the hiring of Jeffrey Pollock, so that's somebody we're going  
13 to want to have testify at the case. And I should say, in  
14 the statement of financial affairs, we have -- Basil DeVito  
15 was identified as the executive director of operations. Mr.  
16 Pollock is identified as the president and chief operating  
17 officer. These are people with high-level executive  
18 positions who are going to want to have their testimony in  
19 this case.

20 Docket ID 8 is the first day declaration of Mr.  
21 Pollock. He talks in paragraph 19, on page 8 of 13, of the  
22 shared-services arrangement with WWE, which provides WWE --  
23 quote:

24 WWE provides the debtor with certain centralized  
25 corporate and administrative services; principally, finance

1 and accounting services.

2           Footnote 7, the shared-services agreement also  
3 covers additional services, such as HR and marketing, that  
4 were initially provided by WWE before being transitioned to  
5 the debtor.

6           So, a lot of this is of record and these are the  
7 people that we are going to want to talk to. When it comes  
8 to the negotiation, the arrangement for his compensation, did  
9 they talk to other potential candidates? What were they  
10 demanding for salary?

11           And then going into things about the performance  
12 of his job, in that supplemental declaration that Mr. Luck  
13 gave, you know, he does talk about having to work with,  
14 during his time there, the co-CEOs of WWE, the general  
15 counsel of WWE, and the senior vice president of human  
16 resources, and he names them all. These are the senior  
17 executives that we're going to want to have their testimony  
18 here.

19           So, look, I don't think there are facts really in  
20 dispute on this. And, you know, we've mentioned some in our  
21 briefing, and a lot of this is of record that we're relying  
22 on.

23           With regard to the inability to get somebody to  
24 testify at trial, the test is, as I understand it from  
25 reading the Mitel v Facebook, which was a district court case

1 of Delaware, which we cited -- it's 943 F.Supp. 2nd 436 --  
2 that we can't show that (indiscernible) some certainty that  
3 these people wouldn't show up. It's just a reason to believe  
4 that they won't testify without a subpoena. I think  
5 terminating Mr. Luck gives us some, you know, some reason to  
6 suspect that the former or other former executives aren't  
7 going to necessarily cooperate with them.

8           Let me see. The other items I just want to  
9 address quickly, the whole argument about, well, the district  
10 court didn't decide these issues. If the district court  
11 didn't decide these issues, I mean, if the district court did  
12 decide this, we would have filed a motion to dismiss, not a  
13 motion to transfer venue.

14           I think the essence of it is, one, familiarity,  
15 and two, there is some impact on, you know, having a judge  
16 who's familiar with it. If the issue was as simple as, Well,  
17 you didn't give notice and an opportunity to cure, maybe that  
18 plays a little bit into a reasonably equivalent value  
19 analysis, but the point was familiarity with those underlying  
20 issues.

21           But with regard to being a Delaware-formed entity,  
22 I mean, there are cases that transfer litigation where the  
23 Plaintiff is a Delaware-formed entity where they really don't  
24 have much happening in Delaware, but that. Mitel Networks is  
25 one of them. And then there was a case, DHP Holdings II



1 Corp. which was a Bankruptcy Court case, that wasn't an  
2 avoidance action; it was like an AR collection case --

3 THE COURT: Uh-huh.

4 MR. GOLDSTEIN: -- where that one was sent to --  
5 it was an AR collection case against Home Depot and the  
6 judge -- I think it was Judge Walrath -- I'm doing this from  
7 memory -- sent it to the Northern District of Georgia. And  
8 part of it was, like, this isn't so central to what's  
9 happening in the bankruptcy case -- it's a collection  
10 proceeding -- so we'll send it there. So, you know, that  
11 doesn't answer the question in its entirety.

12 So, that's -- I have nothing further, Your Honor,  
13 if you have any questions for me.

14 THE COURT: What about the idea that while there  
15 aren't a hundred preference actions, this is the last thing  
16 that has to be wrapped up before this case can be closed?

17 MR. GOLDSTEIN: I think the issue in the case law  
18 that I read was the focus was on the -- you want to  
19 centralize where there are a numerosity of proceedings that  
20 are like the same kind of thing. It wasn't necessarily -- I  
21 didn't see anything in the case law saying, Well, there's  
22 just this one thing remaining and that's going to decide it.

23 I think one way or the other, the case will get  
24 litigated and move forward. I think we have the advantage  
25 of -- if we get to Connecticut and before Judge Bolton, we

1 have a judge who's very familiar with everything and will be  
2 able to move the case with some speed.

3 But I don't see -- I didn't see anything in the  
4 case law suggesting one way or the other that particular  
5 issue.

6 THE COURT: No, I think this case has some unique  
7 procedural postures in front of me in multiple ways that I  
8 don't see in, you know, the typical preference action case.

9 Okay. Thank you.

10 MR. GOLDSTEIN: Thank you, Your Honor.

11 THE COURT: Okay. Is that really right? Oh, it  
12 is right. Wow.

13 I want to collect my thoughts on this. As I said,  
14 I think it's really an unusual fact pattern, so I'm going to  
15 do that. I will say that my colleague's comment on  
16 multifactor tests that get beyond three factors is probably  
17 pretty -- it's almost a truism when you have that many  
18 factors. So, I really don't find 12-factor tests very  
19 helpful.

20 I think it is clear that this is within the sound  
21 discretion of the Court. I want to make sure my discretion  
22 is being -- that I'm acting soundly in my discretion here.  
23 So, I'm going to collect my thoughts and what I'm going to do  
24 is I will issue a bench ruling, but I will do it later this  
25 week and I will let all of you all participate by Zoom if

1 that's what you would like to do. You can also be here in  
2 person if you want to be, but I will get it done this week  
3 and I will collect my thoughts.

4           There are some unique aspects of this case,  
5 including, in my mind, the fact that the estate chose to  
6 pursue certain of its claims against Mr. Luck elsewhere and  
7 so that a judge did gain some familiarity with the underlying  
8 factual situation. But I will back to you. Ms. Johnson will  
9 be back to you with a time.

10           Thank you very much. I really did appreciate the  
11 argument. And those who get the brunt of it, it's helpful  
12 for me to have your answers, so I appreciate it.

13           COUNSEL: Thank you, Your Honor.

14           THE COURT: Thank you.

15           (Proceedings concluded at 3:28 p.m.)

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CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of my knowledge and ability.

/s/ William J. Garling

February 8, 2023

William J. Garling, CET-543

Certified Court Transcriptionist

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